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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 OXNARD SCHOOL DISTRICT,
Plaintiff,

17 v.

18 I.H., A MINOR, by and through his
parents CYNTHIA CORTEZ AND
19 MALCOLM HERRERA; CYNTHIA
CORTEZ, individually; and
20 MALCOLM HERRERA, individually,
21 Defendants

Case No.: 18-CV-7357-SVW-AS

**DEFENDANTS' OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION; THIRD
DECLARATION OF JANEEN STEEL
AND [PROPOSED] ORDER**

Judge: Honorable Stephen V. Wilson

Mediation: 10/2/2018 - 9:30 a.m.

P.I. Hearing: 10/15/2018- 1:30 p.m.

Hearing on Motion To Dismiss:

10/29/2018- 1:30 p.m.

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I. Introduction

Plaintiff Oxnard School District (“Oxnard” or “District”) seeks a preliminary injunction to prevent an eight-year-old child from attending *any*¹ District school—even though there is no showing of irreparable harm—as this Court already has determined. Moreover, the issue of the appropriate placement for I.H. is scheduled for hearing before the Office of Administrative Hearings (“OAH”) beginning on October 4, 2018. Indeed, the OAH hearing is scheduled to continue October 15-17, 2018 and October 23 – 25 --which will overlap with the preliminary injunction hearing scheduled in this Court for October 15, 2018. Under OAH’s rules, a decision should be issued by approximately November 5, 2019. OAH already conducted a prehearing conference in the administrative case on September 24th, setting dates for the hearing, clarifying the issues to be heard, and setting forth procedures for the presentation of testimony and evidence. *See* Declaration of Janeen Steel dated September 26, 2018 (“Steel Dec.”) at ¶12, Ex. F (Dkt. #31-2).

Based on the undisputed facts, this case should be dismissed or stayed because Plaintiff cannot make a showing of irreparable harm necessary to support a *Honig* injunction. As this Court held in denying the request for a TRO, “[d]efendant has stayed home and has not attempted to return to school.” Minute Order at 2 (Dkt. #23). Thus, he does not present a danger to anyone. Nothing has changed since the Court denied the TRO, except that the parties are scheduled for

¹ Initially, District wanted to force I.H. to attend Casa Pacifica, a Non-Public School that does not have an autism-specific program, and where he previously was injured. Cortez Dec., ¶¶7-10, Exs. A – C (Dkt. # 31-4). Now District appears to be offering placement at North Hills Prep in Van Nuys, CA or the Academy for the Advancement of Children with Autism (“Autism Academy”) in Chatsworth, although Defendants dispute that District has made formal offers of placement because there has been no IEP. Nevertheless, even if I.H. agreed to one of these placements, I.H. has not been admitted to either of these programs; we also do not believe that District has contracts for services with either of these programs. Thus, these are not viable options at this time.

1 mediation in this case on October 2, 2018 and to begin the OAH hearing on
2 October 4, 2018.

3 This proceeding is entirely duplicative of the OAH due process case. The
4 question of appropriate placement for I.H is already being evaluated and discussed
5 by multiple lawyers and experts in the context of the ongoing OAH proceedings.
6 District made a strategic decision to not avail itself of numerous legal options
7 under special education law to address the placement issue. District cannot now
8 claim “irreparable harm” when none exists, particularly, when the placement issue
9 will soon be resolved in an administrative trial, containing multiple days of
10 testimony, before OAH.

11 Because Plaintiff cannot meet its burden of demonstrating that “irreparable
12 harm” will ensue if this Court doesn’t issue a *Honig* injunction, the motion for
13 preliminary injunction should be denied. Alternatively, consistent with the
14 *Colorado River*² doctrine, this action should be stayed pending resolution of the
15 OAH hearing scheduled to begin on October 4, 2018.

16 **II. Procedural History & Factual History**

17 **A. The District Failed to Avail Itself of Legal Options to Address** 18 **Any Dispute about I.H.’s Placement on At Least Five Occasions** 19 **over the Last Four Months.**

20 I.H. alleges in his affirmatively filed cases, that the District failed to identify
21 him appropriately as needing special education services for at least two years. *See*
22 *generally* I.H.’s Due Process Complaint, filed August 16, 2018, Steel Dec., ¶ Ex. A
23 (Dkt. #31-2).

24 **B. The District Failed to File to Defend Its Offers to I.H. for More** 25 **Than Three Months.**

26
27 ² *Colorado River Water Conservation Dist. v. United States* (1976) 424 U.S. 800, 815.

1 I.H. was finally assessed in the winter of 2017-18. The District found him
 2 eligible for special education in January of 2018. However, I.H. alleges that the
 3 District did not complete a thorough evaluation for Autism. As a result, I.H.
 4 obtained an independent educational evaluation by Dr. Betty Jo Freeman, of
 5 University of California, Los Angeles, one of the nation's leading experts on
 6 Autism. *See* Declaration of B.J. Freeman dated September 11, 2018 ("Freeman
 7 Dec.") ¶ 7, Ex. B (Dkt. #31-3). On February 26, 2018 the District held another IEP,
 8 which became the basis for I.H.'s later "stay put" motion, and subsequent OAH
 9 order. *See* Steel Dec. Ex. B. (Dkt. #31-2).

10 Prior to that IEP being implemented however, there was a behavior incident
 11 on March 9, 2018 that resulted in I.H. being removed to a temporary placement at
 12 Casa Pacifica.³ 34 C.F.R. §300.530(g) (regarding interim placements under IDEA).
 13 Temporary placements typically last for 45 days unless extended by a hearing
 14 officer or by agreement. 34 C.F.R. §300.532(a). I.H.'s temporary placement was
 15 from April 2, 2018 to June 14, 2018. Steel Dec., ¶ 9, Ex. D.⁴ (Dkt. #31-2).

16 On May 1, 2018 the District held an IEP meeting to review the temporary
 17 placement at the 30-day mark. At that IEP meeting the District made an offer to
 18 keep I.H. at Casa Pacifica. I.H.'s mother did not agree with or sign that IEP. The
 19 District did not file to defend its offer as a "Free Appropriate Public Education"
 20 under the IDEA. *See* § III.A; and *I.R. v. L.A. Unified Sch. District* 805 F.3d 1164,
 21 1170 (9th Cir. 2015) (School districts in California must initiate an administrative
 22 _____

23 ³ Although the IEP was held on February 26th, it was not signed by I.H.'s mother
 24 until March 15th, and therefore had not yet been implemented.

25 ⁴ Although the District attempts to argue that this IEP constituted a "change in
 26 placement" under the IDEA, the Office of Administrative Rulings has already held
 27 that Casa Pacifica was just an interim placement, and that the operative IEP in this
 28 case is the one from February 26, 2018. *See* Steel Dec. ¶9, Ex. D (Dkt.#31-2).

1 due process hearing if there is a disagreement between the parent and district
2 regarding placement).

3 On June 7, 2018 the District held another IEP meeting. The District again
4 offered Casa Pacifica as I.H.'s placement. I.H.'s mother notified the District she
5 would not agree for her son to return to Casa Pacifica. Again, the District did not
6 file to defend its offer as FAPE in the IEP.

7 I.H.'s temporary placement expired on June 14, 2018. The District did not
8 file to have the interim placement at Casa Pacifica extended. It could have done
9 this under clear provisions in the IDEA, that allow for a request for an expedited
10 hearing that will occur in 20 days after request to extend the interim placement
11 when District the "believes that maintaining the current placement of the child is
12 substantially likely to result in injury to the child or others," in this case, the
13 current placement was the February 26, 2018 IEP offer, which was public
14 elementary school placement. 34 C.F.R. §300.532(a); 34 C.F.R. §300.532(c)(2).

15 On July 26, 2018 the District held another IEP meeting to review the report
16 of Dr. Freeman, who had concluded that I.H. has Autism. Despite this new
17 information, the District continued Casa Pacifica as a placement. I.H.'s mother
18 again said that she rejected the offer of Casa Pacifica. During the July 26, 2018
19 IEP, Parent requested I.H. attend a District elementary school that has an Autism
20 special day class to implement Dr. Freeman's recommendations. The District
21 refused to offer a District autism special day class and refused to accept I.H.'s
22 Autism diagnosis. Parent requested a home-based program hoping to get the
23 needed Autism specific services. Again, the District did not file an administrative
24 proceeding to defend its offer of Casa Pacifica.

25 The District took no action the entire summer. School started on August 16,
26 2018. On August 14th, Counsel for I.H. emailed counsel for the District informing
27
28

1 them that I.H. intended to come back to school at Cesar Chavez, given that was his
 2 last agreed upon placement. Counsel for the District said that the school would
 3 “turn [I.H.] away.” Steel Dec.¶ 8, Ex. F (Dkt. #31-2). However, the District did
 4 not take any legal action or resolve I.H.’s placement issue.

5 **C. The District Failed to Participate in I.H.’s Administrative Case**
 6 **Until Its Unsuccessful Motion for Reconsideration to OAH, Filed**
 7 **After It Lost on Its TRO in Federal Court.**

8 As a result, I.H. stayed at home with no school program. On August 16th,
 9 I.H. filed a request for due process with the Office of Administrative Hearings and
 10 a motion for “stay put” based on his last agreed upon IEP from February 26, 2018.
 11 The District did not file an opposition to I.H.’s motion, and did not respond to the
 12 due process complaint. The District did not file a request in that due process
 13 hearing to expedite the hearing because of any alleged safety concerns. 34 C.F.R.
 14 §300.532(a); 34 C.F.R. §300.532(c)(2).

15 The District also failed to hold a resolution session, which is an informal
 16 negotiation session that Districts are required to hold within 15 days after the filing
 17 of the due process complaint. 34 C.F.R. §300.510(a).

18 Only after I.H. exercised his rights under IDEA did the District file this case
 19 initially in Ventura County Superior Court. On August 20th, 2018, Counsel for the
 20 District notified Counsel for I.H. that it intended to file a TRO application in state
 21 court. On August 22nd, when the original TRO was noticed in state court, no
 22 hearing took place due to a procedural issue. The same day, counsel for I.H.
 23 removed this case to federal court.

24 On September 5th, counsel for I.H. filed a motion to expedite the hearing at
 25 OAH because the District had failed to hold a resolution session, which is allowed
 26 under the procedural rules of IDEA. The District did not file any opposition. The
 27

1 District did not refile its TRO request in federal court immediately. Instead, it
2 waited another two and half weeks, while I.H. continued to have no school
3 program. It only filed its request for a TRO after I.H. *won* his unopposed stay put
4 motion with the Office of Administrative Hearings. *See, Steel Dec.*, ¶9, Ex 9
5 (“Stay Put Order”) (Dkt. #31-2). I. H. received his stay-put order on September 5th
6 and counsel received notice of this TRO late in the day on September 7th.

7 On September 12, 2018, this Court denied District’s application for a
8 temporary restraining order because District could not establish the likelihood of
9 irreparable harm. Minute Order, (Dkt. #23).

10 District subsequently filed a motion for reconsideration with OAH regarding
11 the “stay put” order on September 17, 2018, arguing that counsel’s failure to
12 respond to the stay put motion was a result of “excusable neglect” because District
13 was overwhelmed by its efforts to pursue injunctive relief outside of the OAH
14 process—including in this action. OAH denied the motion for reconsideration on
15 September 24, 2018, expressly rejecting District’s claim of excusable neglect,
16 stating “[t]he essence of Oxnard’s argument is that its counsel was so busy
17 pursuing relief in another forum, and with other special education matters, that it
18 neglected its duties in this one.” Stay Put Order at 2. (Dkt. #23). As noted by OAH,
19 District made a strategic decision to avoid having OAH make the placement
20 decision for I. H., seeking instead to pursue injunctive relief pursuant to *Honig*.
21 District must now live with the consequences of that choice.

22 Since then, OAH has held a prehearing conference in the administrative
23 case, conferring with both counsel for I.H. and the District. The Administrative
24 Law Judge set the hearing dates for October 4, 15-18, 23 and 25.

25 District cannot make the necessary showing of “irreparable harm” to obtain
26 injunctive relief under *Honig*. Thus, the motion for preliminary injunction denied
27
28

1 and this case dismissed. In the alternative, because there is an OAH hearing
 2 scheduled for October 4, 2018 that will address the identical placement issue that
 3 District raises in this proceeding, this Court should stay the action pending
 4 resolution of the OAH case.

5 **III. Argument**

6 **A. Pursuant to the *Colorado River* Doctrine, This Case Should Be** 7 **Stayed Pending Resolution of the OAH Hearing Which** 8 **Addresses Identical Issues**

9 Pursuant to the Supreme Court's decision in *Colorado River Water*
 10 *Conservation District v. United States* (1976) 424 U.S. 800, 815, federal courts may,
 11 in the interest of "wise judicial administration" stay a case involving a question of
 12 federal law where a concurrent state action is pending that raises identical issues.
 13 Among the factors to be considered by the Court when deciding to stay a case
 14 pursuant to *Colorado River* are the following:

- 15 1) Whether there is substantial similarity between the state and federal suits
 16 (*Nakash v. Marciano*, 882 F. 2d 1411, 1416 (9th Cir. 1989)("exact
 17 parallelism between claims not required");
- 18 2) Forum shopping – *Fireman's Fund Ins. Co. v. Quackenbush* 87 F.3d 290,
 19 297 (9th Cir. 1996);
- 20 3) Priority of proceedings, both in terms of which action was filed first and
 21 how much progress has been made in the two actions- *Colorado River*, 424
 22 U. S. at 818; *Moses H. Cone Mem. Hosp. v. Mercury Const. Corp.* 460 U.
 23 S. 1, 21 (1983)("Moses H. Cone"); and
- 24 4) Adequacy of state proceedings to protect the rights of the party invoking
 25 federal jurisdiction-*Moses H. Cone*, 460 U.S. 1, 25-26.

26 Based on the application of these factors, this Court should, at a minimum,
 27
 28

1 stay this action pending a decision in the parallel OAH proceeding which is going to
 2 hearing later this week⁵. First, the issue of placement is directly at issue in the OAH
 3 hearing, in which numerous experts are scheduled to testify. Second, District was
 4 forum-shopping in an attempt to avoid OAH at all cost, likely because of the
 5 strength of I.H.'s experts, all of whom are familiar to OAH. Third, the OAH
 6 proceeding was filed first and is set for hearing beginning on October 4, 2018. Last,
 7 the OAH proceeding is more than adequate to protect District's rights. Indeed, if
 8 OAH is not satisfied with the OAH decision, it can appeal to this Court. In the
 9 meantime, based upon the special education expertise of OAH, the overlapping
 10 issues and the progress of the OAH matter, this Court should stay this action
 11 pending a final decision on placement from OAH.

12 **B. District Cannot Establish the Necessary Element of Irreparable**
 13 **Harm.**

14 On September 12, 2018, this Court denied District's application for a TRO,
 15 finding that District failed to establish the necessary element of "irreparable harm"
 16 under *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).
 17 Minute Order at 1 (citing *Alliance for Wild Rockies v. Cottrell*, 632 F. 3d. 1127,
 18 1135 (9th Cir. 2011)). Then, as now, there was no showing of "irreparable harm"
 19 because "[d]efendant has stayed at home and has not attempted to return to school."
 20 Minute Order at 2. There has been no change of circumstances justifying an
 21 injunction now. Indeed, with the OAH hearing scheduled to begin in just two days,
 22 District cannot demonstrate that extraordinary relief is warranted in this case.

23 In this case, District cannot establish the facts necessary to get an injunction
 24 under any circumstances because there is no threat that I.H. will try to attend Cesar
 25

26 ⁵ OAH held a pre-hearing conference on September 24, 2018. The parties already have
 27 exchanged their lists of exhibits and witnesses, with the actual evidence to be produced later this
 28 week. See, Steel Dec. ¶12, Ex.F (Dkt. #31-2)

Chavez elementary, even though it is his “stay put” placement. District has made it abundantly clear that they will turn I.H. away from Cesar Chavez if he attempts to attend class, and will not provide him with the necessary supports and services required under his IEP so that he can succeed there. Instead, the placement issue will be determined shortly by OAH, with the due process hearing scheduled to begin on October 4, 2018. Accordingly, the motion for preliminary injunction should be denied.

C. The District’s Claim That It Needs a *Honig* Injunction is Belied by the Fact that It Has Waited Months to Resolve I.H.’s Placement, And Failed to Utilize Multiple Legal Avenues That Would Have Allowed Thoughtful Resolution of Any Placement Dispute.

Here, the parties have been discussing I.H.’s placement for nearly four months. The District took no legal action throughout that process – despite having multiple opportunities to seek legal relief - including when school started on August 16, 2018. Instead, District filed the instant action after I.H. exercised his legal rights by filing a due process complaint and “stay put” motion against the District with OAH – a motion that the District did not oppose and lost. Now, with a parallel OAH due process hearing scheduled to begin in two days, District seeks extraordinary relief in this Court, despite being unable to demonstrate any exigent circumstances or irreparable harm.

Moreover, even though exhaustion is not typically required in cases seeking *Honig* injunctions, District’s federal complaint should not be used as an end run around available administrative procedures. Indeed, *Honig* injunctions typically involve situations in which truly exigent circumstances exist. *See, e.g., Honig v. Doe*, 484 U.S. 305, 326 (1988) (referencing injunction as alternative to “time-consuming” administrative procedures under IDEA); *Gadsden City Bd. of Educ. v.*

1 *B.P.*, 3 F.Supp.2d 1299 (N.D. Alabama 1998) (finding that expedited hearing within
 2 10 days insufficient because student returning from suspension, requiring resolution
 3 in less than 24 hours). Here, however, the District has waited nearly four months
 4 over the course of a dispute about placement, failing to file and/or seek expedited
 5 hearings at every turn. Indeed, the District has known since June that I.H.'s
 6 placement was in dispute, and that his last controlling IEP placed him at Cesar
 7 Chavez with extensive supports.

8 If the District had requested an expedited hearing under 34 C.F.R.
 9 §300.532(a) when I.H. filed his due process complaint on August 16th, the hearing –
 10 including full evidentiary testimony – *would have already occurred*, and the
 11 decision issued. [34 C.F.R. §300.532(c)(2) for 20 days for hearing, 10 for decision]
 12 Instead, the District waited until the last possible moment to file for a *Honig*
 13 injunction, falsely claiming the need for emergency relief because of the likelihood it
 14 would suffer irreparable harm without federal court intervention.

15 **1. Under Ninth Circuit Law, District Was Required To File a Due**
 16 **Process Complaint To Defend its Placement at Casa Pacifica**

17 In Spring 2018, District temporarily placed I.H. at Casa Pacifica Nonpublic
 18 School for 45 days because of behavior issues resulting from District's ongoing
 19 failure to address his needs. On May 1, 2018, during a team meeting to address his
 20 Individualized Education Plan ("IEP"), I.H.'s mother and counsel did not agree to
 21 him continuing at Casa Pacifica Non-Public School after the 45-day interim
 22 placement.

23 The District did not file an action with the administrative hearing office to
 24 defend its placement offer for I.H. to continue at Casa Pacifica. Under special
 25 education law, school districts have an obligation to provide a "free appropriate
 26 public education." If a district believes it is making an appropriate offer of
 27

1 placement that the parents ultimately reject, the Ninth Circuit has held that a district
 2 ***must*** file a complaint against the student (via the administrative proceedings at
 3 OAH) in order to obtain a finding that the offer provides the appropriate placement
 4 and services for the child. *I.R. v. Los Angeles Unified School District*, 805 F.3d
 5 1164, 1168-69 (9th Cir. 2015). Indeed, the Ninth Circuit held that the school district
 6 must initiate a due process hearing expeditiously. *Id* at 168-69. The District did no
 7 such thing here, and thus neither sought nor obtained an order that its offer of Casa
 8 Pacifica was appropriate for I.H.

9 On June 7, 2018, the IEP team met again to discuss, *inter alia*, placement after
 10 the 45 period at Casa Pacifica. Again, I.H.'s mother explained that she did not agree
 11 with him continuing in the program. Again, the District did not file for an
 12 administrative hearing to defend its placement or obtain a resolution from the
 13 appropriate administrative tribunal that it was an appropriate offer from the District.

14 **2. District Rejected An Expert Diagnosis of Autism**

15 On July 26, 2018, the IEP team met again to discuss an independent
 16 evaluation by Dr. Freeman from U.C.L.A., who found that I.H. had Autism.
 17 However, District refused to accept Dr. Freeman's findings or her
 18 recommendations. District again suggested Casa Pacifica, and I.H.'s mother and
 19 counsel explained again that Casa Pacifica Non-Public School was not an
 20 appropriate option for I.H. for a number of reasons, including that he was injured
 21 while there (*see infra* Section E. regarding the physical injuries to I.H. at Casa
 22 Pacifica). The parties had a discussion about a possible home program and I.H.'s
 23 mother and counsel requested placement in an autism program consistent with Dr.
 24 Freeman's recommendations. Again, the District did not file for an administrative
 25 hearing to defend its offer of placement.

26 There were ongoing discussions, but no resolution of I.H.'s school placement
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 28

1 as of August 16, 2018, when school started in the District.

2 Not only did the District fail to file to defend its previous offers of placement,
3 but the District *also* failed to request a hearing at the Office of Administrative
4 hearings on the safety issues it is alleging in this complaint. Indeed, IDEA gives
5 Districts clear rights in situations such as this to request a hearing from the
6 administrative tribunal on the precise issue of the placement of I.H. during this
7 dispute. Indeed, federal regulations specifically allow a District that “believes that
8 maintaining the current placement of the child is substantially likely to result in
9 injury to the child or others,” may request a hearing. 34 C.F.R. §300.532(a). The
10 District did not avail itself of this option either.

11 Instead, the District gave notice to I.H.’s counsel of its application for a TRO
12 on August 20th, shortly after I.H. had filed his OAH complaint. Once I.H. removed
13 this case to federal court, the District waited another two weeks to re-file its TRO.

14 **D. The Office of Administrative Hearings Is the Designated Agency**
15 **to Hear Special Education Actions in California under IDEA and**
16 **Has Scheduled a Hearing to Begin October 4, 2018**

17 Here, the relevant questions, namely where should this young child with a
18 disability attend school and what are the appropriate supportive and therapeutic
19 services needed for him to be successful in school, are all governed by the
20 Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. §1400, *et seq.*), as
21 well as related disability nondiscrimination statutes, including but not limited to the
22 Americans with Disabilities Act, (42 U.S.C. §12101, *et seq.*). IDEA in particular
23 contains numerous substantive and procedural protections for I.H. in the instant
24 situation.

25 When a school district fails to provide the student with an educational
26 program that is developed and implemented pursuant to the Individuals with
27

1 Disabilities Education Act (IDEA) and/or fails to offer and implement a program
2 that provides meaningful educational benefit and allows the student to progress from
3 year to year and advance appropriately toward appropriate goals and objectives,
4 IDEA provides that the student may access an administrative hearing review process
5 and obtain viable relief for such failures on the part of the District by filing a “due
6 process complaint notice,” which is essentially a complaint like those filed in federal
7 or state court. 20 U.S.C. § 1415(b)(7).

8 A due process complaint requires, among other things, a description of the
9 nature of the problem of the child relating to such proposed initiation or change,
10 including facts relating to such problem, and a proposed resolution of the problem to
11 the extent known and available to the party at the time. 20 U.S.C. § 1415(b)(7)(A).
12 In California, the Office of Administrative Hearings/Special Education Division
13 hears matters related to the any special education matter relating to the identification,
14 evaluation or educational placement of a child with a disability, or the provision of
15 free appropriate public education (“FAPE”) to the child. *See* 34 C.F.R. §
16 300.507(a)(1). These complaints result in legal proceedings, up to and including
17 administrative trials. The results of these cases may be appealed to federal court. 20
18 U.S.C. § 1415(g).

19 Here, I.H. exercised his rights under IDEA and filed a complaint with the
20 Office of Administrative Hearings on the evening of August 16, 2018. *See* Steel
21 Dec., ¶ 6, Ex. A. (Dkt. #31-2) I.H.’s case addresses both the District’s failure to
22 identify I.H. over an extended period of time as a student in need of special
23 education services, and also addresses the dispute regarding his current placement.
24 *See* Steel Dec ¶13, Ex. F. (Dkt. #31-2) I.H. also filed a motion for “Stay Put” which
25 District ignored. The “stay put” motion provided yet another avenue for District to
26 address its alleged safety concerns with respect to I.H.’s placement. Steel Dec. ¶7,
27
28

1 Ex. B. (Dkt. 31-2).

2 District also failed to hold a required resolution session within 15 days of the
3 filing of the due process complaint. As a result, I.H. filed a motion for the hearing to
4 be expedited. District did not oppose this motion. Now, despite all of these
5 opportunities to address the safety issues regarding I.H.'s placement, District alleges
6 that it requires extraordinary relief from this Court, despite its inability to
7 demonstrate that irreparable harm will result if OAH determines the placement issue.

8 **E. I.H. Already Has Been Injured at One of The Schools Where**
9 **District is Trying to Force Him to Attend.**

10 I.H. was at Casa Pacific Non-Public School from April 2-June 8, 2018.
11 During that time period, he was sent home with scratches on at least two occasions.
12 Declaration of Cynthia Cortez dated August 22, 2018 ("Cortez Dec."), ¶¶ 9,10, Ex.
13 B, C (Dkt. #31-4). . On May 11, 2018, I.H. was in the segregation room and was
14 injured so severely he required four staples in the back of his head. His mother was
15 called to pick him up and when she arrived he had blood running down his back and
16 his shoes and socks were filled with blood. *See* Cortez Dec., ¶7-8, Ex. A (Dkt. #31-
17 4).

18 I.H. is not safe at Casa Pacifica Non-Public School because their
19 interventions have resulted in injury to I.H. *See* Freeman Dec., ¶22 (Dkt. 1#31-3).
20 To the extend District alleges that it has made "offers"⁶ of other placements,
21 including at North Hills Prep and Autism Academy—those offers are not relevant to
22 this dispute, having nothing to do with the issue of whether irreparable harm will
23 result if I.H. attends Caesar Chavez—his "stay put" placement. District cannot use a
24

25 ⁶ District suggested some alternative placements informally by way of email and telephone.
26 None of these discussions rises to the level of an actual offer of "placement" under the IDEA,
27 particularly since it is unknown whether District has a contract for services with the only
28 remotely appropriate program—Autism Academy-- or if the program would accept I. H.

1 *Honig* as a substitute for holding an IEP meeting or the pending due process hearing.
2 Indeed, upon information and belief, District does not even have contracts with the
3 other NPS programs it is suggesting as appropriate placements for I.H. Thus, these
4 additional so-called “offers” have no bearing on whether this Court should issue a
5 preliminary injunction.

6 **IV. Conclusion**

7 For the foregoing reasons, I.H. respectfully requests that the motion for
8 preliminary injunction be denied in its entirety.

9 Dated: October 1, 2018

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11 **LEARNING RIGHTS LAW CENTER**
12 **DISABILITY RIGHTS ADVOCATES**
13 **LAW OFFICES OF SHAWNA L. PARKS**

14 By: _____



15 Shawna L. Parks Esq.
16 Attorneys for Defendant
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